

FCC MAIL SECTION

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Federal Communications Commission

DA 98-177

DISPATCHED BY Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 98-15
Table of Allotments,)	RM-9142
FM Broadcast Stations.)	
(Brinkley and Colt, Arkansas))	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 28, 1998

Released: February 6, 1998

Comment Date: March 30, 1998

Reply Comment Date: April 14, 1998

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of East Arkansas Broadcasters, Inc. ("petitioner"), permittee of Station KQMC-FM, Channel 272C2,¹ Brinkley, Arkansas, requesting the reallocation of Channel 272C2 to Colt, Arkansas, and the modification of its authorization accordingly, to provide the latter community with its first local aural transmission service. Petitioner stated its intention to effectuate the changes reflected in its proposal.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License ("Modification")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). In support of the proposal petitioner states that the requested reallocation of Channel 272C2 to the incorporated community of Colt (population 3,755),² which is not within nor near an urbanized area, is mutually exclusive with its existing allotment at Brinkley³ (population 4,234).

¹At the time this proposal was filed Station KQMC-FM was authorized to operate on Channel 272A, but had a one-step application pending to operate on Channel 272C2 at Brinkley (File No. BPH-951013ID). The subject application was granted January 6, 1998, and as a result, we will consider herein petitioner's request to reallocate Channel 272C2 to Colt, Arkansas.

²Population figure was taken from the 1990 U.S. Census reports.

³Coordinates at the petitioner's specified transmitter site at Colt are also those specified in its construction permit issued for Channel 272C2, Brinkley, at 34-58-10 and 90-51-07.

3. In further support, petitioner advises that Colt is an incorporated municipality with an elected mayor. Additionally, petitioner states that Colt has its own fire department, water system, commercial activity and religious affiliations. Further, petitioner reports that many of the businesses and organizations located in Colt identify themselves with the community by incorporating the word "Colt" in their trade names, citing *Kenansville, Florida*, 10 FCC Rcd 9831 (1995) (the existence of numerous organizations that include the community's name is an indicator of community status).

4. Additionally, petitioner asserts that the requested reallocation of Channel 272C2 to Colt will enable Station KQMC-FM to provide service to 101,838 people within its projected 60 dBu contour, encompassing an area of 8,560 square kilometers, representing an increase in service to 92,740 persons (1,019%) and an area gain of 7,412 square kilometers (646%). According to the petitioner's engineering analysis, utilizing the site authorized for Channel 272C2 at Brinkley, the proposed allotment of Channel 272C2 at Colt would comply with the requirements of Section 73.315 of the Commission's Rules. Further, according to the petitioner's engineering report, based upon the V-Soft Communications ComparPop program, no population loss would occur as a result of the proposed reallocation. Petitioner concludes that adoption of its proposal would result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992),⁴ as the reallocation would provide Colt with its first local aural transmission service (priority three), whereas Brinkley would retain local aural transmission service from fulltime Station KBRI(AM) (priority four).

5. We believe the petitioner's proposal warrants consideration as the reallocation request could provide Colt with its first local aural transmission service and enable Station KQMC-FM to expand its service area. Therefore, we propose to reallocate Channel 272C2 from Brinkley to Colt, Arkansas, and modify the authorization for Station KQMC-FM accordingly. The petitioner's modification request is consistent with the provisions of Section 1.420(i) of the Commission's Rules. Therefore, we shall propose to modify the authorization for Station KQMC-FM without entertaining competing expressions of interest in the use of Channel 272C2 at Colt, Arkansas, or requiring the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

6. Channel 272C2 can be allotted to Colt, Arkansas, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's specified site located 18.2 kilometers (11.3 miles) south of the community, utilizing coordinates 34-58-10 and 90-51-07.

7. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities

⁴The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

listed below, as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
Brinkley, Arkansas	272C2	--
Colt, Arkansas	--	272C2

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before March 30, 1998, and reply comments on or before April 14, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

John F. Garziglia, Esq.
Patricia M. Chuh, Esq.
Pepper & Corazzini, L.L.P.
1776 K Street, N.W.
Washington, DC 20006

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte

presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.